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Supreme Court, U.S.
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IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1992

STATE OF ALABAMA,

PETITIONER,

V.

TRACY MONIQUE CALDWELL,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND
COURT OF CRIMINAL APPEALS OF ALABAMA

# PETITION OF THE STATE OF ALABAMA

OF

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ATTORNEY GENERAL

AND

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46 pp

## QUESTIONS PRESENTED

1. Where an arrestee is subjected to no force, threats, rewards, offers of rewards, or any other form of coercion, and is accorded the procedure mandated by Miranda v. Arizona, (384 U.S. 436 [1966]), including being advised of his or her constitutional rights, acknowledging understanding of them, and waiving the rights, is a statement by the arrestee admissible, not withstanding the fact that a sophisticated battery of tests given to the arrestee over a year later indicates that the arrestee did not understand the concepts of the Miranda Rule at the time of the arrest?

2. Is a statement obtained from an arrestee under the conditions outlined above, rendered involuntary solely by the fact that he or she lacks the mental ability to comprehend the concepts of the Miranda Rule, where the arrestee indicates understanding of the warning?

## THE PARTIES

In The Circuit Court of Tuscaloosa County, Alabama, the Court of Criminal Appeals of Alabama, and the Supreme Court of Alabama, the parties were Tracy Monique Caldwell, who is Respondent herein, as Defendant, Appellee, and Respondent, respectively, and the State of Alabama, who is Petitioner herein, as Plaintiff, Appellant, and Petitioner, respectively.

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# PETITION OF THE STATE OF ALABAMA

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The State of Alabama, Your Petitioner, respectfully prays that a writ of certiorari issue to review the opinions and orders of the Supreme Court and Court of Criminal Appeals of Alabama in the above cause.

## OPINIONS AND ORDERS BELOW

The Order of the Circuit Court of Tuscaloosa County, Alabama, granting the Respondent's motion to suppress the Respondent's four statements is

not reported and is submitted as Appendix "A" to this petition.

The opinion and order of the Court of Criminal Appeals of Alabama affirming the Circuit Court's order is reported as follows:

State v. Caldwell, 611 So.2d 1149 (Ala. Cr. App, 1992)

A copy of this opinion is submitted in Appendix "B" hereto.

The order of the Court of Criminal Appeals of Alabama denying rehearing is reported with the above opinion. A copy of the same is submitted in Appendix "B" hereto.

The order of the Supreme Court of Alabama denying the writ of certiorari sought by the State of Alabama to review the above opinion and order is reported with the above opinion.

A copy of the same is submitted as Appendix "C" hereto.

## JURISDICTION

The order of the Supreme Court of Alabama denying review was issued on February 5, 1993, and this petition is filed within ninety (90) days of said date. This Honorable Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

## CONSTITUTIONAL PROVISIONS INVOLVED

The Alabama Courts believed that their decisions were mandated by the prohibition against self incrimination of the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Constitution of the United States. Your Petitioner is making a claim under the same said provisions. Said constitutional provisions read:

"AMENDMENT V

"No person shall... be compelled in any criminal case to be a witness against himself..."

"AMENDMENT XIV

"Section 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of

the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of the law; nor deny to any person within its jurisdiction the equal protection of the laws."

## STATUTORY PROVISIONS INVOLVED

The Respondent is indicted under Sections 13A-6-2 and 43, 13A-7-5, and 13A-8-41, Code of Alabama, 1975, a copy of the same is submitted in Appendix "D" hereto. The validity of these statutes is not at issue here.

## STATEMENT OF THE CASE

The Respondent, Tracy Monique Caldwell, who will hereinafter be referred to as "Caldwell", was indicted by the Grand Jury of Tuscaloosa County, Alabama, for murder,[1] burglary in

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[1]Section 13A-6-2, Code of Alabama, 1975, appendix "D"

the first degree,[2] robbery in the first degree[3] and kidnapping in the first degree.[4] (R.pp.2-5)

On February 8, 1990, Caldwell's motion for a forensic evaluation of her competence to stand trial and mental condition at the time of the offense was granted. On June 7, 1990, she was found competent to stand trial. (R.pp.41-46 and 55-62)

On June 21, 1990, Caldwell waived arraignment on the indictment and pleaded not guilty. (R.p.63) The waiver sets out the following recitations by Caldwell's Attorney:

> "...Comes the attorney for the above-styled defendant and certifies that on this date the above and foregoing rights were read by the defendant in my presence, or were read

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[2]Section 13A-7-5, Code of Alabama, 1975, appendix "D"

[3]Section 13A-8-41, Code of Alabama, 1975, appendix "D"

[4]Section 13A-6-43, Code of Alabama, 1975, appendix "D"

to him [sic] by me, that I discussed such rights with the defendant, in detail, that a written copy of the above rights was given to the defendant for him [sic] to keep,use and study, and that I concur in the plea of not guilty ..." (Ibid.)

On February 28, 1991, Caldwell moved to suppress certain statements she had made, on the following grounds:

"1. On or about November 10, 1989 the Defendant was taken into custody in Tuscaloosa County, Alabama. Subsequently the Defendant gave two statements; one on 11/10/89 and a second statement on 11/15/89 to Tuscaloosa Homicide Officers.

"2. At the time these statements were given, the Defendant was approximately 18 years of age and had an IQ of 70 with a reasoning capacity of a ten (10) year old.

"3. The Defendant, Tracy M. Caldwell had been involved in Special Education throughout her school career. She had been labeled 'educable mentally retarded.'

"4. The Defendant has been recently tested by Dr. Ann Bishop to determine Defendant's ability to understand her Miranda Rights. A copy of the testing protocol and results are attached hereto as 'Exhibit A'.

"5. The Defendant, Tracy M. Caldwell did not understand or perceive her Miranda Rights as read to her by Tuscaloosa County Police Officers and

therefore could not have given the statements knowingly and voluntarily.

"WHEREFORE, the Defendant would request that the Court suppress any and all statements given by the Defendant regarding this case." (R.pp. 83-84)

On April 25 and August 29, 1991, the cause came on for hearing before Honorable Thomas S. Wilson, a Circuit Judge. Caldwell was attended by her attorneys. (Tr. pp. 4ff and 140ff) At this hearing, it was proven without conflict that in obtaining four separate custodial statements from Caldwell, Tuscaloosa City and County law enforcement officers had followed the standard Miranda procedure. It was undisputed the statements were in no way coerced. There was, however, sharply conflicting expert testimony on whether the Appellee was capable of understanding Miranda. An expert employed by the defense testified that Caldwell could not understand the concepts of the Miranda Rule. The State presented an expert who testified that Caldwell had a practical understanding of the warning as it related to her. (Transcript)

On January 14, 1992, the Trial Judge granted the motion to suppress on the grounds that, since the Appellee could not understand a Miranda warning, the statements were not made with a voluntary waiver. (R.p.132) The Trial Court's order reads as follows:

"ORDER

> "This cause was heard on defendant's motion to suppress the statement given by the defendant on the grounds that the defendant did not fully and voluntarily waive her rights, because she did not understand her rights and the 'Miranda warnings.'
>
> "After a review of all the evidence it is the opinion of this court that the defendant did not understand her 'Miranda rights' and did not freely and voluntarily waive said rights. Therefore, [on] the motion to suppress [,] the statements taken to date are ordered suppressed...." (R.p.132; appendix "A")

Appeal followed. (R.pp. 138-139)

On September 30, 1992, the Court of Criminal Appeals of Alabama affirmed the Circuit Court's order. The Court issued an opinion, in which it recognized that the police had engaged in no misconduct and had followed model Miranda procedure. However, the Court of Appeals

concluded (1) that the Trial Judge was justified in finding that Caldwell could not and, therefore, did not understand the Miranda warnings[5] and (2) that because the Appellee did not understand the Miranda warnings, contrary to her assertions to the police, her statements were involuntary. State v. Caldwell 611 So.2d 1149 (Ala. Cr. App, 1992); appendix "B")

On October 7, 1992, the Petitioner State applied for rehearing and moved for the finding of additional facts.

On November 13, 1992, the Court of Appeals overruled the Petitioner State's application without opinion. (Ibid, page 13)

The Petitioner State sought review of the Court of Criminal Appeals' decision and opinion by petition for a writ of certiorari in the Supreme Court of Alabama raising the points and

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[5] In light of the ore tenus rule, the Petitioner State has, of course, never questioned this proposition.

questions herein presented. However, on February 5, 1993, the Alabama Supreme Court denied review, with two Justices dissenting (Appendix "C")

Unless this Honorable Court reverses the decisions below or new and unanticipated evidence comes to light, the further prosecution of Caldwell's charges is barred. See Rule 15.7(h) A.R.A.P, appendix "E".

## STATEMENT OF THE FACTS

Mindful of the heavy burdens of this Honorable Court and not wishing to add thereto, we here present a brief summary statement of the facts. A more detailed statement can be found in the opinion of the Court of Criminal Appeals of Alabama. State v. Caldwell 611 So.2d 1149 (Ala. Cr. App, 1992); cert. den; appendix "B". A full detailed statement with full record references is set out in appendix "F" to this petition.

On Friday, November 10, 1989, investigators of the Tuscaloosa Homicide Metro Unit were investigating the disappearance of Ms. Corinne Harless, an elderly citizen and her automobile.

Ms. Harless' automobile was located at a hamburger restaurant at about 2:15 p.m. Ms. Harless' vehicle was being operated by a man and Respondent Caldwell. Caldwell was arrested and during the course of the day made three separate statements to the police. In the case of each statement, Caldwell was given a standard Miranda warning, indicated that she understood her rights and wished to waive them and then made the statement. At no point was Caldwell ever subjected to any force, threats, given any reward or hope of reward. After her third statement on November 10, 1989, Caldwell was released.

On November 15, 1989, Caldwell was arrested pursuant to a warrant. She was again advised of her rights by a standard Miranda warning, stated that she understood her rights and that she wanted to make a statement. She waived her rights in writing, as she had incident to two of the three November 10, 1989, statements. She then made a fourth statement. Again she was subjected to no force or threats and neither given nor promised any reward.

No suggestion has ever been made of impropriety in Caldwell's arrests or the compliance with standard Miranda procedure by the Police. No claim has ever been advanced that Caldwell was subjected to any coercion by the Police, and the evidence affirmatively shows that none occurred.

The above facts have been established and undisputed throughout this litigation.

The issues in this case arose against the background of the above facts but relate to events which occurred a year and two months after Caldwell's statements.

On February 1, 1991, an expert employed by the Defense administered a Grisso test to Caldwell, and, based on this test, concluded that Caldwell could not comprehend the concepts of the Miranda warning.

The Prosecution presented an expert who testified that in his opinion Caldwell had as good a practical understanding of the Miranda warning as the average person.

The Trial Judge credited the Defense expert's testimony and concluded that Caldwell could not understand a Miranda warning and, therefore, did not understand the warnings she received on November 10 and 15 of 1989. Based on this finding, His Honor found that Caldwell's statements were not made with a voluntary waiver. See Appendix "A".

The Court of Criminal Appeals of Alabama found that the Trial Judge's finding was supported by the evidence and that, due to her not understanding the Miranda warning, her statements were involuntary as a matter of law. See Appendix "B".

## SUMMARY OF THE ARGUMENT

1. In light of Rule 15.7(a) and (h) A.R.Cr.P, appendix "E", this cause is final but is no sense moot.

2. This case presents an unusual opportunity to address a commonly raised issue of law on which there is little appellate authority. That issue is presented with great

clarity, since the record shows model police compliance with the Fifth Amendment and the procedure mandated by Miranda v. Arizona, (384 U.S. 436, 16 L.Ed 2d 694, 86 S. Ct. 1602 [1966]), and the Respondent's statements were suppressed solely because of her mental condition.

3. In equating voluntariness with Miranda comprehension, the Alabama Courts ignored the important difference between the substance of the Fifth Amendment right against compulsory self incrimination and Miranda procedure. In so ruling, the Alabama Courts ruled contrary to the many opinions of this Honorable Court holding un-Mirandarized statements to be voluntary.

4. Contrary to the consistent teaching of this Honorable Court, the Alabama Courts in this case expanded the Miranda Rule to erect a new barrier to the admission of probative evidence. This is a barrier which the police will never be able to predictably surmount.

5. Although, this Court has never had an occasion to squarely address the issue presented by this case, the resolution of that issue by the

Alabama Courts in this case is inconsistent with the opinions of this Court on related issues, including involuntariness resulting from mental disease.

## ARGUMENT

### I

### PRELIMINARY MATTERS: FINALITY AND MOOTNESS

This cause arose as a pretrial appeal by the State of Alabama under Rule 15.7 A.R.Cr.P. appendix "E". Rule 15.7(a) provides; in pertinent part:

> "...Such an appeal may be taken only if the district attorney certifies to the Court of Criminal Appeals that the appeal is not brought for the purpose of delay and that the order, if not reversed on appeal, will be fatal to the prosecution of the charge. (Emphasis supplied.)

The state appellate Courts affirmed the Trial Court's ruling. Therefore, Rule 15.7(h) applies. That provision reads:

> "...(h)EFFECT OF RULING IN PRE-TRIAL APPEAL. If the trial court's ruling is upheld following a pre-trial appeal taken pursuant to this rule, then that affirmance shall operated as a bar to

> any further prosecution of the defendant or defendants as to whom the appeal was taken for any crime involved in the charge or charges as to which the appeal was taken, unless the trial court shall find that the subsequent prosecution is primarily based upon significant new evidence not reasonably available to the state when the pre-trial appeal was taken."
> (Emphasis supplied.)

Therefore, barring a reversal by this Honorable Court this cause is finally disposed of.

It may be that by the time this petition can be filed, the trial court will have formally dismissed the indictment. Such order would only re-affirm what Rule 15.7(h), above, accomplished as a matter of law. However, such order would not moot these proceedings, since on a reversal by this Court, the order of dismissal would be voided.

There is no basis for a claim that these proceedings are not final or that they are moot.

II

INTRODUCTION

Miranda v. Arizona, (384 U.S. 436, 16 L. Ed 2d 694, 86 S. Ct. 1602 [1966]), requires that an arrestee be informed of his constitutional rights and give some indication that he or she understands the warning. However, it is not unusual for criminal defendants, who received adequate warnings and indicated understanding, to claim that they did not really understand the warning. When trial judges reject such claims, the appellate courts invariably affirm on the basis of the ore tenus rule. When trial judges uphold such claims, appellate review is rare. This case is unusual, if not unique, in that this is an appealed case in which the trial judge credited the defense evidence and discredited the conflicting state's evidence. We, of course, took no issue with the Trial Judge's credibility choice in the state appellate courts and do not now. However, because of this finding by the trial court, this case presents an important and commonly raised

issue of law on which there is little appellate authority.

The issue of law is clearly presented in this case against a background of model compliance by the police with both the Fifth Amendment and the Miranda Rule. There are no ambiguities or confusing factors. The police conduct presented by this record could be used as a case study in how to obtain a constitutionally proper confession. Yet, the Trial Judge ruled that the Respondent's statements had to be suppressed, solely because of her mental condition.

We submit, then, that this case provides a rare and convenient opportunity to address the issue of the constitutional significance of a mental defect which interferes with an arrestee's understand of a Miranda warning, where, incident to the Miranda procedure, the arrestee asserted understanding.

III

VOLUNTARINESS AND MIRANDA

REASON FOR GRANTING THE WRIT:

CONFLICT WITH THE CONTROLLING DECISIONS OF THIS HONORABLE COURT

It is indisputed that in obtaining the Respondent's statements the police engaged in no coercive activities. Indeed, no such claim has ever been made. It is also undisputed, "...that the police gave thorough [Miranda] warnings and explained the waiver of Miranda rights to the ...[Respondent]...[and that in] each situation and prior to each statement, the ...[Respondent] waived her rights...." (State v. Caldwell 611 So. 2d 1149, 1152 [Ala.Cr.App, 1992]; cert. den; appendix "B", page 10 ) It is further undisputed that each waiver included the Respondent's stating that she understood her rights. Yet, on finding that the Respondent really did not understand the concepts of Miranda, the State Courts found her four statements involuntary. Thus, if this case had gone to trial, Respondent Caldwell's statements

would not have been admissible to impeach her conflicting testimony. See Mincey v. Arizona 437 U.S. 385; 397-398, 57 L.Ed 290, 303, 98 S. Ct. 2408 (1978); compare Harris v. New York 401 U.S. 222, 28 L.Ed 2d 1, 91 S. Ct. 643 (1971);

This case presents the fundamental question: What sort of rule did this Honorable Court establish in Miranda v. Arizona, (384 U.S. 436, 16 L. Ed 2d 694, 86 S. Ct. 1602 [1966]), a rule of substance or procedure? The critics of Miranda invariably claim that this Court added to the Constitution in the Miranda decision, but Courts since the dawn of the English legal system have established procedures to protect substantive rights. Therefore, this criticism is groundless, unless Miranda is something other than procedure. But, in Miranda itself and in every case construing Miranda, this Court has described the Rule and treated it, as procedure.

The substance of the Miranda rule is the Fifth Amendment, which has been a part of the Constitution since December 15, 1791. Of course, the policy against forcing persons to give

evidence against themselves is in no sense an American innovation. The policy was already well established in England at the time of Magna Carta in 1215. Thus, what was established in Miranda in 1966 was not a new substantive right but a new procedure to protect an ancient privilege.

The right against compulsory self incrimination is the right of an individual to choose whether he will provide incriminating testimony or not. Of course, there are many reasons why a person might choose to make a statement. "...It is difficult to tell with certainty what motivates a suspect to speak...." Oregon v. Elstad, 470 U.S. 298, 313, 84 L.Ed.2d 222, 235, 105 S.Ct. 1285 (1985). However, with one exception, the motivation is irrelevant. That exception is police coercion. This Honorable Court has consistently rejected claims that confessions were rendered involuntary for Fifth Amendment purposes by anything other than police coercion. E.g. Oregon v. Elstad, above; Moran v. Burbine, 475 U.S. 412, 89 L.Ed.2d 410, 106 S.Ct. 1135 (1986); and Colorado v. Connelly,

479 U.S. 157, 93 L.Ed.2d 473, 107 S.Ct. 515 (1986).

In Miranda v. Arizona, this Court established a procedure, which if followed would guarantee that a statement would be voluntary. This guarantee is secured by the requirement that an arrestee make an uncoerced, affirmative waiver of his rights to silence and counsel, which is an integral part of the Miranda procedure. "An involuntary statement obtained in compliance with Miranda procedure", such as implicitly found by the State Courts in this case is a contradiction of terms. At the same time, the Miranda Rule provides a clear procedure for obtaining admissible confessions. This Court has long recognized that the cost of Miranda is that many confessions, which would be fully admissible under the Fifth Amendment, are rendered inadmissible by Miranda. E.g. Michigan v. Tucker, 417 U.S. 433, 443, 41 L.Ed.2d 182, 192, 94 S.Ct. 2357 (1974).

The vital distinction between the substantive right against compulsory self

incrimination of the Fifth Amendment and the procedure established by Miranda is clearly seen in the case of voluntary, admissible statements, in which Miranda compliance is not mandated. Obviously, if Miranda compliance were essential to voluntariness, there could never be a voluntary statement without Miranda compliance. Yet, this Court has consistently limited the Miranda mandate to custodial interrogations. Statements obtained under all other circumstances are tested by traditional, pre-Miranda voluntariness standards.

In Miranda itself the Court wrote: "...Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today..." (384 U.S. 436, 478, 16 L.Ed.2d 694, 726) Voluntary statements by persons who are not in custody are admissible without proof of a Miranda warning. Beckwith v. United States, 425 U.S. 341, 48 L.Ed.2d 1, 96 S.Ct. 1612 (1976). This is so even in the case of station house questioning. California v. Beheler, 463 U.S.

1121, 77 L.Ed.2d 1275, 103 S.Ct. 3617 (1983) Un-Mirandarized questioning is acceptable even if the person is under arrest, if he is not in custody. Berkemer v. McCarty, 468 U.S. 420, 436ff, 82 L.Ed.2d 317, 332ff, 103 S.Ct. 3138 (1984) Thus, if Caldwell had been questioned at the hamburger restaurant, before any action was taken that would have led a reasonable innocent person to believe that they were not going to be allowed to go shortly, the admissibility of her answers would have been unaffected by the lack of a Miranda warning. In New York v. Quarles (467 U.S. 649, 81 L.Ed.2d 550, 104 S.Ct. 2626 [1984]), this Court held that in emergency situations, a person under custodial arrest could be questioned without Miranda warnings, and a statement resulting therefrom is admissible, if it is voluntary. Finally, a voluntary custodial statement obtained without Miranda compliance is admissible to impeach the party (Harris v. New York, 401 U.S. 222, 28 L.Ed.2d 1, 91 S.Ct. 643 [1971]), but not an involuntary statement. Mincey v. Arizona, 437 U.S. 385, 397-398, 57

L.Ed.2d 290, 303, 98 S.Ct. 2408 (1978). As this Court stated in Oregon v. Elstad, above:

> "...The failure of police to administer Miranda warnings does not mean that the statements received have actually been coerced, but only that courts will presumed the privilege against compulsory self-incrimination has not been intelligently exercised...." (470 U.S. 298, 310, 84 L.Ed.2d 222, 233)

If a voluntary and admissible statement can be obtained without a Miranda warning, it follows that a voluntary statement can be obtained from a party who does not comprehend the concepts of Miranda.

In equating Fifth Amendment voluntariness with Miranda comprehension, the Alabama Courts elevated Miranda procedure to a substantive right and ruled contrary to the controlling authorities of this Honorable Court.

IV

THE STATE COURTS HAVE EXPANDED MIRANDA TO ERECT AN ADDITIONAL BARRIER TO THE ADMISSION OF VOLUNTARY STATEMENTS.

REASON FOR GRANTING THE WRIT:

CONFLICT WITH THE CONTROLLING DECISIONS OF THIS HONORABLE COURT

This Court has, "... cautioned against expanding ... exclusionary rules by erecting additional barriers to placing truthful and probative evidence before state juries...." (Colorado v Connelly, 479 U.S. 157, 166, 93 L.Ed.2d 473, 484, 107 S.Ct. 515 [1986]) In this case, the Alabama Courts threw that caution to the wind and erected just such a barrier.

The Fifth Amendment bars from evidence statements which are the product of police coercion, but in this case the police engaged in no coersive activity. The Miranda Rule requires that a procedure for the taking statements be followed, which includes informing an arrestee of his rights, obtaining an assertion of understanding and of waiver of rights, and that procedure was followed in this case. As regards,

the Miranda warning, this Court in Miranda wrote: "...Only through such a warning is there ascertainable assurance that the accused was aware of his right...." (384 U.S. 436, 472, 16 L.Ed.2d 694, 722) However, that "ascertainable assurance" is no longer recognized in Alabama.

The Alabama Courts have added a third requirement. It is not enough that a statement not be coerced. It is not enough that a statement be obtained in accordance with the procedure established in Miranda. Even if the arrestee is advised of his or her rights and expressly states that he understands them, this is not enough, if, in the depths of his or her mind, the arrestee really and truly does not understand the concepts of Miranda. In establishing this third requirement, the Alabama Courts ruled contrary to the decisions and opinions of this Honorable Court.

In Miranda v. Arizona this Court established a policy designed, "...to give concrete constitutional guide lines for law enforcement agencies and courts to follow..." (384 U.S. 436,

441-442, 16 L.Ed.2d 694, 705) As we pointed out in the preceding section, Miranda is a procedural rule. Like all procedural rules, its office is regularity and predictability. The "downside" of the Miranda rule is that many voluntary statements, which under the Fifth Amendment would be admissible, are rendered inadmissible. Michigan v. Tucker, 417 U.S. 433, 443, 41 L.Ed.2d 182, 192, 94 S.Ct. 2537 (1974) The "upside" of the Rule is that, if the Miranda procedures are followed, the resulting statements are certainly admissible. As Justice Thurgood Marshall observed in Berkemer v. McCarty (468 U.S. 420, 82 L.Ed.2d 317, 104 S.Ct. 3138 [1984]):

> ....One of the principal advantages of the doctrine that suspects must be given warnings before being interrogated while in custody is the clarity of that rule. ..." (468 U.S. 420, 430, 81 L.Ed.2d 317, 329)

See also Moran v. Burdine, 475 U.S. 412, 425, 89 L.Ed.2d 410, 423, 106 S.Ct. 1135 (1986). In Berkemer, Justice Marshall quoted Fare v. Michael C. (442 U.S. 707, 61 L.Ed.2d 197, 99 S.Ct. 2560 [1979]):

> "...Miranda's holding has the virtue of informing police and prosecutors with specificity as to what they may do in conducting custodial interrogation, and of informing courts under what circumstances statements obtained during such interrogation are not admissible. This gain in specificity, which benefits the accused and the State alike, has been thought to outweigh the burdens that the decision in Miranda imposes on law enforcement agencies and the courts by requiring the suppression of trustworthy and highly probative evidence even though the confession might be voluntary under traditional Fifth Amendment analysis. See Michigan v. Tucker, 417 US 433, 443-446, 41 L.Ed.2d 182, 94 S.Ct. 2357 (1974) ...." (442 U.S. 707, 718, 61 L.Ed.2d 197, 208; emphasis supplied.)

But, under the policy established by the Alabama Courts in this case, that "...gain in specificity ...." is lost in the labyrinth of psychological testing theory.

In requiring that police officers not only inform arrestees of their rights but also make arrestees understand their rights, the Alabama Courts created a barrier which the police could never predictably surmount. At the outset, obviously few police departments are equipped to provide arrestees with the sort of testing services the Respondent received. If such

services were made available, would it be necessary to test each arrestee before questioning? Obviously, such testing would delay interrogation, in which innocent people might assert alibis, which could be verified, and guilty people might identify accomplices and provide information necessary to rescue victims. And, even if such services were provided, there is a high probability that a given arrestee, especially one with resources, could find an expert who would contradict the police department expert.

In Escabedo v. Illinois, (378 U.S. 478, 12 L.Ed.2d 977, 84 S.Ct. 1758 [1964]), this Honorable Court held that an arrestee's request for counsel had to be respected. Justice White dissented, describing the Escobedo Rule as:

> ""...[A] rule wholly unworkable and impossible to administer unless police cars are equipped with public defenders and undercover agents and police informants have defense counsel at their side...." (378 U.S. 478, 496, 12 L.Ed.2d 977, 989)

But, equipping police departments with experts on the comprehension of Miranda would not solve the

problem created by the Alabama Courts, because the question of whether someone understands something is, in the final analysis, always a matter of opinion. Even if a person says he understands, there is now way of knowing if he really means it.

Although Caldwell is retarded, the problem is not limited to retarded persons. The situation in which any arrestee finds himself or herself is hardly appropriate to a civics lesson. Many arrestees, especially those anxious to "tell their story", probably pay little attention to the warning. The most the police can do is give the warning, answer any questions the arrestee has and assume that, if the arrestee says that he or she understands and wants to waive, they mean what they say.

What this Court wrote in Colorado v. Connelly, above, a case addressing the effect of mental disease on voluntariness for Fifth Amendment purposes, the continuation of the quotation with which we began this section, applies in this case:

> "...'[T]he central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence, Delaware v. Van Arsdall, 475 U.S. 673, 681, 89 L.Ed.2d 674, 106 S.Ct. 1431 (1986), and while we have previously held that exclusion of evidence may be necessary to protect constitutional guarantees, both the necessity for the collateral inquiry and the exclusion of evidence deflect a criminal trial from its basic purpose. Respondent would now have us require sweeping inquiries into the state of mind of a criminal defendant who has confessed, inquiries quite divorced from any coercion brought to bear on the defendant by the State...." (479 U.S. 157, 166-167, 93 L.Ed.2d 473, 484; emphasis supplied)

In this case, the policy adopted by the Alabama Courts would have the courts go behind an arrestee's assertion of understanding of the Miranda warning and make "...sweeping inquiries into the stand of mind of ..." the arrestee at the time of that assertion, to see if he or she really and truly understood the warning. See State v. Caldwell 611 So. 2d 1149, 1151-1152; appendix "B", page 9.

Rules like Miranda are designed to provide with information on their rights and the opportunity to exercise them. At the same time,

these rules are designed to provide the authorities with standard procedures to follow, so that whatever comes out of those procedures has a quality of certainty. If the certainty of these results can be undermined by subsequent claims that what the citizen asserted during the procedures was false, then these rules are nothing except generators of sterile litigation.

Caldwell was given the procedure prescribed by Miranda. That procedure included a warning, an opportunity to ask for more information, an opportunity to express ignorance of the warning, an opportunity to decline to waive her rights and to refuse to speak. On hearing the warning, she expressed understanding. Given the opportunity to assert her rights, she chose to waive them. Given the opportunity to remain silent, she chose to tell her story, four times. If the Miranda procedure has any practical value, her statements were admissible and Alabama Courts erred to reversal in suppressing them.

V

MENTAL CONDITION AND MIRANDA

REASON FOR GRANTING THE WRIT:

THIS CASE PRESENTS AN IMPORTANT QUESTION OF CONSTITUTIONAL LAW, WHICH THIS COURT HAS NOT BUT SHOULD ADDRESS.

The only reason for suppressing the Caldwell's statements is that she allegedly did not understand the Miranda warning. It is undisputed that she received such warnings and stated that she understood them and appeared to do so, but an expert hired by the Defense testified that, due to her mental condition, she could not understand the warnings.

This Honorable Court has consistently rejected the notion that physiological influences, which are unrelated to police coercion, render a confession inadmissible under the Fifth Amendment or Miranda. For example, in Oregon v. Elstad; (470 U.S. 298, 84 L.Ed 2d 222, 1055 S. Ct. 1285 [1985]), rejected a state court ruling that improper failure to comply with Miranda in obtaining statements undermined the

voluntariness of subsequent statements. The Court observed:

> "...This Court has never held that the psychological impact of voluntary disclosure of a guilty secret qualifies as state compulsion or compromises the voluntariness of a subsequent informed waiver...." (470 U.S. 298, 312, 84 L.Ed.2d 222, 234)

And:

> "...This Court has never embraced the theory that a defendant's ignorance of the full consequences of his decisions vitiates their voluntariness...." (470 U.S. 298, 316, 84 L.Ed.2d 222, 237)

In Colorado v. Connelly, (479 U.S. 157, 93 L.Ed.2d 473, 107 S.Ct. 515 [1986]), this Court refused to recognize as involuntariness for Fifth Amendment purposes, the compulsion to make a confession which resulted from a mental condition. Connelly is remarkably similar to this case. There, as here, the root concern was not police misconduct but the arrestee's mental condition. There, as here, a state court found that the arrestee's condition impacted the interrogation procedure. In Connelly, the state courts found that the arrestee's condition prevented him from choosing not to make a

statement. In this case, the state courts found that the Respondent's condition prevented her from understanding a Miranda warning. In Connelly, this Honorable Court rejected for Fifth Amendment purposes the concept of involuntariness arising from the arrestee's mental condition. The Court wrote:

> "...We hold the coercive police activity is a necessary predicate to the finding that a confession is not voluntary within the meaning of the Due Process Clause of the Fourteenth Amendment. We also conclude that the taking of respondent's statements, and their admission into evidence, constitute no violation of that Clause..." (470 U.S. 157, 167, 93 L.Ed.2d 473, 484)

Of course, Connelly involved the Fifth Amendment, while the instant case involves Miranda, but the relationship between the two is such that Miranda must never be aggrandized over the Amendment. As this Court wrote in Michigan v. Tucker, (417 U.S. 433, 41 L.Ed.2d 182, 91 S.Ct. 2357 [1974])"

> "...The Court recognized [in Miranda] that these procedural safeguards were not themselves rights protected by the Constitution but were instead measures to insure that the

> right against compulsory self-incrimination was protected...." (417 U.S. 433, 444, 41 L.Ed.2d 182, 193)

It must, of course, it must be recognized that one of the purposes of the Miranda procedure is to inform the arrestee of his or her rights and that understanding of those rights is a necessary incident to being so informed, but the Miranda procedure makes provision for that. Part of that procedure is an indication by the arrestee of understanding the warning. In this case, Caldwell expressly stated that she understood the warning. Certainly the Miranda Rule does not encompass misleading the officers.

While this Honorable Court has never had the opportunity to address squarely the issue of the impact of mental defect on Miranda procedure, it seems clear that the resolution of this issue by the Alabama Courts is inconsistent with the opinions of this Court on related issues. For this reason, we submit the writ should issue in this case.

## CONCLUSION

In conclusion your Petitioner, the State of Alabama, respectfully submits that in this case the Court of Criminal Appeals and the Supreme Court of Alabama, ruled contrary to the decisions of this Honorable Court and erroneously resolved an important question not previously addressed by this Honorable Court.

Therefore, Your Petitioner prays that this Honorable Court will issue a writ of certiorari and will review the matters complained of and reverse the decisions of the said appellate courts of Alabama.

Respectfully submitted,

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